



STATE OF WISCONSIN – JUDICIAL COUNCIL

WISCONSIN JUDICIAL COUNCIL

MAY 20, 2022 – 9:00 A.M.

CONDUCTED ONLY BY ZOOM

MADISON, WISCONSIN

William Gleisner is inviting you to a scheduled Zoom meeting. On May 20, 2022 at 9 a.m., join the Zoom Council Meeting using the following URL: ¹ <https://us02web.zoom.us/j/87534726971?pwd=0HsYWsb1ovJx1v4agL0UGcksEjJy-Z.1>

When prompted, enter passcode: 555

Members of the public will be permitted to attend this meeting but must agree to refrain from disrupting the meeting. If anyone is unsure how to sign into the meeting, please email Bill Gleisner (gleisnerwilliam@gmail.com) or call him at 414-651-3182.

- I. Roll Call and approval of the March 18, 2022 Minutes.
- II. The Council's Evidence & Civil Procedure Committee (ECP), Chaired by Tom Shriner, has embarked on an ambitious and comprehensive review of The Wisconsin Rules of Evidence. With regard to this review, it is very important to give the ECP all the powers necessary to complete its work

¹ The following is additional information concerning the February 18, 2022 Zoom meeting:

Meeting ID: 875 3472 6971

Passcode: 555

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Dial by your location

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with alacrity and professionalism. To that end, at our May Council meeting I will propose that ECP Chair Shriner be vested with all the powers set forth in Wis. Stat. §758.13(c), which statute provides in part as follows:

The council ... or any committee thereof when so authorized by the council is empowered to hold public hearings at such times and places within the state as may be determined. Any member of the council or any committee thereof shall have the power to administer oaths to persons testifying before the council or committee. By subpoena issued over the signature of its chairperson or acting chairperson and served in the manner in which circuit court subpoenas are served, the council or any committee when authorized by the council, may summon and compel the attendance of witnesses...

Without seeking further Council authority, if vested by the Council with the powers set forth in the foregoing statute I believe that ECP Chair Shriner can appoint subcommittees and hold public hearings on matters within the ECP's jurisdiction. More importantly, I believe that it is a fair inference from the foregoing statute that if vested with the powers set forth in this statute, ECP Chair Shriner can seek input from stakeholders (including lawyers and business leaders) to determine opinions of stakeholders concerning any proposal of the ECP to amend or repeal any provision of The Wisconsin Rules of Evidence.

Further, based on a fair inference from the foregoing statute, I will recommend to the Council at our May meeting that if the Council authorizes the submission of a Petition to the Supreme Court concerning the Wisconsin Rules of Evidence, then Attorney Shriner should draft and sign such Petition (and any supporting Memorandum) and represent the Council (in person or in writing) before the Supreme Court.

Attorney Shriner has been an excellent ECP Chair. He led a comprehensive review of Class Actions in Wisconsin which led to the adopting of Fed. R. Civ. P. 23 into law in Wisconsin by the Supreme Court (later enacted into law by the Legislature). He was also responsible for a comprehensive review of injunction law in Wisconsin.

Tom Shriner has now assembled a very impressive team to conduct the comprehensive review of Wisconsin's Rules of Evidence. He is responsible for the addition of two Professors of Evidence to the ECP as ad hoc members to help with this review. UW Law Professor David Schwartz is one such Professor. The other is the Dean of Wisconsin Evidence Law, MU Professor Dan Blinka. Both of these Professors are supported on the ECP Committee by law student interns who in turn are also ad hoc members of the ECP. To underscore the highly professional manner in which this

review will be conducted, I am attaching just one of the preliminary worksheets from the ECP. In the accompanying worksheet, one can see that each chapter of the Wisconsin Rules of Evidence will be evaluated side-by-side with the counterpart Federal Rule of Evidence.

Besides being a partner at Foley & Lardner, Tom Shriner is also a Professor at the MU Law School. To give you some idea the high regard in which Tom Shriner is held in the legal community, accompanying this Agenda is an email which I received recently from Professor Blinka.

- III. It is now time to again renew our efforts to receive funding for the Council. As you know, I have appointed an ad hoc Budget Committee chaired by Attorney Adam Plotkin. Margo Kirchner and I are members of this ad hoc Committee. At the May meeting of the Council, Adam will report on the Committee's work, and its planned summer schedule. I am attaching an email from Attorney Plotkin along with the core of a preliminary budget.
- IV. As you all know, I have a strong interest in electronic evidence and e-discovery. However, in previous discussions of the Council (going back to work I did in helping to draft the first e-discovery rules in Wisconsin a number of years ago), the emphasis has been on civil litigation.

However, a recent article in the Wisconsin Lawyer reminded me that we need to also focus on electronic evidence and procedure within the context of criminal procedure. I am attaching a copy of an article from last month's Wisconsin Lawyer entitled *Mobile Device Forensics for Criminal Defense Lawyers*. I understand that Judge VanDeHey has other obligations on May 20, 2022 and that Adam will deliver the report of the Criminal Procedure Committee. At the May Council meeting, I would like to hear from Adam about the views of the Committee Procedure Committee concerning electronic evidence and discovery in the context of criminal procedure.

- V. At our 5/20/20 meeting, I will also appoint a Nomination Committee for the purposes of selecting a slate of candidates for Chair and Vice Chair of the Judicial Council for next year.
- VI. Committee Reports.
 - (a) Evidence & Civil Procedure Committee.
 - (b) Criminal Procedure Committee.
 - (c) Appellate Procedure Committee.

- VII. Adjournment.

PUBLIC NOTICE

All meetings of the Judicial Council and its committees are open to the public. The Council's May 20, 2022 meeting will be only conducted by Zoom. Members of the public are welcome to join the meeting by using the URL which is set forth above, or by using the Zoom application and entering Meeting No. 875 3472 6971 and, when prompted, enter passcode 555. However, members of the public must supply their name before they will be granted admission. If any member of the public disrupts the meeting in any way, they will be removed from the meeting and will be barred from readmission. For more information, please contact the Chair of the Judicial Council, Mr. Gleisner, at 414-651-3182 or gleisnerwilliam@gmail.com.